COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No 636 of 2001
(Old No. 108 of 1992)

State of U.P. ….. **Appellant.**

Versus

Ganga Dutt
and others ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Heard. Delay is condoned. Admit.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 23-12 1991, passed by Motor Accident Claims Tribunal/ I Additional District Judge, Nainital, ***(in short the Tribunal)*** in Motor Accident Claims Case No. 34 of 1988, whereby the learned Tribunal has awarded Rs. 75,000/- as compensation to the claimants-appellants along with 12% per annum Interest against O.P.No.2, 3 and 4 National Insurance Co. Ltd., State of U.P and Iqbal Singh (respondent no. 6, appellant and respondent No.7 respectively) as directed by the Tribunal under the impugned award. In this appeal, prayer for setting aside the impugned judgment and award has been made by the appellant on the ground that the findings of the learned Tribunal are not based on the evidence on record on rash and negligent driving by the driver of the vehicle involved in the accident and that the quantum of award is excessive and the same is not based on evidence on record and the liability of the appellant to the extent of 50% is arbitrary.

Brief facts of the case are that Mahesh Chandra Pant (deceased), who was son of claimant Ganga Dutta, had died as a result of injuries sustained by him in the motor acceded on

29.3.1987, therefore, claim petition under Section 92-A of the Old Act has been preferred for compensation by his dependents/legal heirs, alleging therein that the deceased was travelling by government Jeep No. U.R.N. 7594 from Nainital to Khatima. At about 11.45 p.m., when the said Jeep reached near Kichcha River Bridge, a head on collusion occurred due to rash and negligent driving of the Truck No. U.R.No. 1985, with the result the deceased sustained grievous injuries and he died while on way to hospital. The deceased was employed as clerk in the officer of Khatima. Hence the claim petition. The O.P. No.2- Insurance Company of the offending truck has contested the claim petition and has admitted its due insurance by the answering O.P. However, it has been asserted that the accident in question was the result of the own negligence of driver of the Jeep in which the deceased was travelling. O.P. No.3, State of U.P., the owner of the Government Jeep also contested the claim petition; but the O.P.Nos. 1 and 4, Kamlesh Kumar and Iqbal Singh did not contest the claim petition despite service, therefore, the case proceeded ex-parte againsts them.

Learned Tribunal framed as many as ***five Issues*** in the case. **Issue No. 1** related to rash and negligent driving by the driver of the offending truck resulting into injuries and consequent death of the deceased. **Issue No.2** related to rash and negligent of the driving of the driver of the Government Jeep **Issue No.3** related to bar of limitation in filing the petition. **Issue No. 4** related to liability of Insurance Company and **Issue No. 5** related to compensation and relief.

After hearing both the parties and going through the evidence on record, the learned Tribunal took Issue Nos. 1 and 2 for decision. The Tribunal ultimately came to the conclusion that the accident in question was the result of the contributory negligence of both the drivers of the vehicles involved in the accident. On Issue No. 3, the learned Tribunal has held that in the

circumstances of the case, delay in filing the claim petition can be condoned. On Issue No. 4, the learned Tribunal has held that the Insurance Company is equally responsible to pay compensation as other Opposite Parties. On Issue No. 5, from the evidence on record, the learned Tribunal has held that the deceased was getting Rs. 960/- per month as salary and has held that the deceased would have spent Rs. 500/- per month towards the maintenance of claimant No. 1 and 2. It has also been held that the deceased would have helped claimant no. 1, father for further period of ten years and his mother, claimant no.2 for 15 years. After determining the income of the deceased till the age of retirement and thereafter, the learned Tribunal has held that the claimant nos. 1 and 2 are entitled to total compensation worth Rs. 75,000/-. Accordingly, the award has been decreed, as directed in the impugned order along with 12% interest per annum from the date of petition till payment under Section 92-A of the Old Act. Aggrieved, the Opposite party No. 3 has come up in appeal with a prayer to set aside the impugned judgment and award on the ground that the finding of contributory negligence is not based on record and the quantum of award is excessive and not based on evidence on record.

We have heard learned Standing Counsel for the State-appellant as well as learned counsel for the National Insurance Company, Mr. Lalit Belwal, and have carefully gone through the material available on record as well as the impugned judgment and award.

It has been argued on behalf of the appellant that the finding of contributory negligence recorded by the Tribunal is not based on the evidence on record. We have considered the entire evidence on record and have scrutinized the testimony of P.W. 2 Head Const. Kapildeo. The statement of this witness is very shaky. This witness, though alleged to be eye witness, could not say as to which of the driver was negligent and responsible for the accident. Evidence of D.W.1, Const. Bindwarani has supported the case that

the Jeep was going on its proper side in slow speed, but according to this witness, he was about 70-75 steps away from the place of accident. On careful perusal of the oral statements of these two witnesses, in its totality, it can safely be held that in case either of the drivers would have been carefully the accident could not have taken place, and, therefore, we are of the opinion that the only inference, which can be drawn on merits is that the motor accident in question was the result of contributory negligence of both the drivers and the learned Tribunal has come to the right conclusion on Issue No. 1 and 2 that the accident was the result of contributory negligence of the drivers of the vehicles involved in the accident. The contention of the appellant on the point of rash and negligent driving cannot be accepted.

So far as the quantum of award is concerned, we find that the learned Tribunal has worked out the compensation after considering the documentary evidence in respect of monthly salary of the deceased and has considered all necessary aspects, while determining the amount of compensation. We have narrated above that the deceased was getting Rs. 960/- per month as salary. Out of this amount, the Tribunal has taken monthly loss of dependency at Rs. 500/-, which is quite reasonable and ultimately has awarded a total sum of Rs. 75,000/- as compensation under the provision of Section 92-A of the Old Act. In any view of the matter, this amount cannot be said to be excessive. It is now settled principle of law that the amount of compensation should be just and proper. We find no force in the argument that the amount of compensation is excessive.

It has lastly been argued that the claim petition was not maintainable as barred by time. It is true that the accident in question took place on 29.03.1987 and the claim petition has been filed on 5.2.1988. The learned Tribunal has relied on the verdict in the case of ***Sujan Singh and others Vs. Dina Nath and others [(1989), A.C.C., 235].*** In our opinion, the plea of limitation is also

not tenable. Nothing could be shown to us to take a different view. We are of the opinion that by condoning the delay, the Tribunal has not committed any illegality or infirmity. It finds place to note that the limitation for filing of claim petition has already been lifted by the statute. In any view of the matter, we have no option but to uphold the findings of the learned Tribunal.

Ultimately, the appeal is devoid of merits and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned, which shall inform the claimant-respondents to withdraw the amount.

(B.S. Verma, J.) **(P.C. Verma, J.)**

24-08-2004
RCP